

assertion by the Defendant that the accident was the Plaintiff's fault. No facts are proven to support such a conclusion.

EXPERT TESTIMONY REGARDING CAUSATION

The Trial Court refused to permit the investigating police officer to testify as to the ultimate issue – the cause of the accident. The Court of Civil Appeals affirmed. The rulings by both courts contradict 12 O.S. § 2704. Prior to the adoption of § 2704, Oklahoma had an undistinguished history of jurisprudence which portrays almost universal staunch resistance by district courts to the admission of expert opinion testimony regarding causation. The Evidence Subcommittee Notes contain a discussion of this unfortunate history. These notes explain:

The older cases often contained strictures against allowing witnesses to express opinions upon ultimate issues, as a particular aspect of the rule against opinions. The rule was unduly restrictive, difficult of application, and generally served only to deprive the trier of fact of useful information. 7 Wigmore §§ 1920, 1921; McCormick § 12. The basis usually assigned for the rule, to prevent the witness from "usurping the province of the jury," is aptly characterized as "empty rhetoric." 7 Wigmore § 1920, p. 17.

[Evidence Subcommittee Notes]

The evidentiary ruling by the Trial Court and the Court of Civil Appeals in this case rests on "empty rhetoric."

The decision by the Court of Civil Appeals in this case directly conflicts with the decision by the Court in Williams

Natural Gas Company v. Perkins, 952 P.2d 483 (Okla. 1997). In this decision, this Court vacated the decision by the Court of Civil Appeals and reversed the Trial Court. The basis of the appeal was § 2704. This Court specifically refers to § 2704 and explains: "*An expert's opinion is admissible even when 'it embraces an ultimate issue to be decided by the trier of fact.'*" (952 P.2d 483, 490). *Certiorari* should be granted because the Court of Civil Appeals has decided an important legal question of substance in a manner contrary to 12 O.S. § 2704, and a decision by this Court.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 28th day of September, 2005, I caused a true and correct copy of the foregoing to be sent by U.S. Mail with proper postage fully prepaid thereon to:

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